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Counsel for Bruce E. Robinson, Trustee

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

IN RE: PEAK 3 CONSTRUCTION, LLC

Case No. 17-34379-KLP
Chapter 7

Debtor.

**TRUSTEE'S MOTION TO SELL PROPERTY OF THE ESTATE BY AUCTION AND
TO PAY COMMISSIONS AND EXPENSES TO AUCTIONEER FROM SALES
PROCEEDS
AND
NOTICE OF MOTION**

Bruce E. Robinson, Trustee for the Bankruptcy Estate (the "Trustee") of Peak 3 Construction, LLC (the "Debtor"), moves to sell certain property of the estate by auction pursuant to 11 U.S.C. §363(b), and to pay the commissions and expenses of the auctioneer pursuant to 11 U.S.C. §330. The Trustee states the following in support of this Motion:

Parties and Jurisdiction

1. On August 31, 2017, the Debtor filed a voluntary petition in this Court under Chapter 7 of the Bankruptcy Code.
2. The Trustee is the duly appointed Chapter 7 trustee for the bankruptcy estate.
3. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157.
4. The Court has subject-matter and personal jurisdiction over all parties in interest pursuant to 28 U.S.C. § 1334.
5. Venue lies in this Court pursuant to 28 U.S.C. § 1409.

Motion to Sell

6. The Debtor was a general contractor operating in Richmond, Virginia. In the operation of its business, the Debtor owned a vehicle and a trailer (the “Personal Property”).

7. The Personal Property constitute property of the estate pursuant to 11 U.S.C. § 541(a) (“The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held: (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.”). The Trustee confirms there are no liens against the Personal Property.

8. The Trustee is authorized to sell the Personal Property pursuant to 11 U.S.C. § 363(b), which provides:

The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, . . .

9. In exercising his business judgment, the Trustee engaged Motley’s Asset Disposition Group (“Motley’s”) to market and to sell the Personal Property by auction. Motley’s is a highly qualified auctioneer whose business includes the sale of vehicles and trailers. Motley’s will market the Personal Property for an absolute auction. The Trustee proposes to compensate Motley’s by paying a twelve percent (12%) commission on the highest bid price for each or all of the Personal Property. Motley’s intends to charge a buyer’s premium of ten percent (10%), which shall not be part of the highest bid price and which shall be paid solely by the buyer. The Trustee shall also reimburse Motley’s to remove and to secure the Personal Property, which amount is \$150.00.

Motion to Approve Payment of Commissions and Expenses to Auctioneer

10. The Trustee seeks to pay Motley's from the sales proceeds in accordance with industry standards. The Trustee submits the commissions are fair and reasonable for marketing and auctioning the Personal Property. The Trustee seeks approval of the commissions and the expenses without further application, which will save the estate the costs to prepare, file and prosecute a separate pleading.

11. The Trustee requests the Court to authorize him to obtain new certificates of title, if necessary, so that he can transfer title to the ultimate buyers.

12. The Trustee requests the Court to waive the stay under Federal Rules of Bankruptcy Procedure 6004(h) ("An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise."). In the instant case, there are no liens on the Personal Property and no controversy regarding entitlement to the sale proceeds. Accordingly, cause exists for the Court to exercise its discretion and abrogate the 14-day stay.

WHEREFORE, the Trustee requests the Court to authorize the relief sought herein and to award any other related relief the Court deems proper.

BRUCE E. ROBINSON, TRUSTEE

By: /s/ Loc Pfeiffer

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NOTICE OF MOTION

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one). If you do not want the Court to grant the relief sought in the motion, or if you want the court to consider your view on the motion, you or your attorney must do the following:

1. You must file with the court, at the address shown below, a written response pursuant to Local Bankruptcy Rules 9013-1 and 2004-1 ***no later than May 8, 2018.***

Clerk of Court
United States Bankruptcy Court
701 E. Broad Street
Richmond, VA 23219

2. You must also mail a copy to:

Loc Pfeiffer, Esq.
Kutak Rock LLP
901 East Byrd Street, Suite 1000
Richmond, Virginia 23219

3. No hearing has been set to consider the Motion. If you object to the Motion, you must file the objection timely. If a hearing is required, you must attend the hearing in addition to filing a written objection to the Motion. If you fail to file timely a written response and to attend the hearing, the Court may consider any objection you may have waived and enter an Order granting the relief requested in the Motion.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on April 16, 2018, a true copy of the foregoing Application was served via the Court's ECF system on all necessary parties and the parties on the attached Service List.

/s/ Loc Pfeiffer _____
Counsel

Service List

Acors and Griffith
1603 Darbytown Road
Henrico, VA 23231-0000

Ally Bank
PO Box 130424
Roseville, MN 55113-0004

Ally Bank, by and through its servicer
Ally Financial Inc.
c/o Carl A. Eason, Esquire
200 Bendix Road, Suite 300
Virginia Beach, VA 23452

Ally Financial
PO Box 9001951
Louisville, KY 40290-0000

Anthony's Decorative Hardware
2219 Tomlynn Street
Richmond, VA 23230-0000

Appliance Contract Sale
1328 Gaskins Road
Richmond, VA 23238

Appliance Contract Sales
1328 Gaskins Road
Henrico, VA 23238-0000

Architectural Custom Woodwork Inc.
44 Plaza Dr.
Manakin-Sabot, VA 23103

Big Wheel Painting
13429 Namozine Road
Amelia, VA 23002-0000

Bremac
8133 Mechanisville Turnpike
Mechanicsville, VA 23111-0000

Bremac, Inc.
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Lafayette, Ayers & Whitlock, PLC
10160 Staples Mill Road, Suite 105
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Bruce Robertson Land Surveying
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Richmond, VA 23235-0000

Builders First Source
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Tappahannock, VA 22560-0000

Capital One
PO Box 30285
Salt Lake City, UT 84130-0000

Capital One Bank (USA), N.A.
by American InfoSource LP as agent
PO Box 71083
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Carrol Plumbing and Heating
8141 Virginia Pine Court
Richmond, VA 23237-0000

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Wilmington, DE 19850-0000

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Attn: Bankruptcy
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Foster Plumbing and Heating
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2280 Dabney Road
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Swift Creek Masonry
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Chesterfield, VA 23838-0000

Office of Reorganization
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Ruther Glen, VA 22546-0000

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